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COUNTY OF LOS ANGELES and SERGEANT TRAVIS KELLY
(Defendants is exempt from filing fees pursuant to Government Code § 6103)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA ASSIFF,

Case No.: 2:22-cv-05367 RGK(MAAx)

Plaintiffs.

V.

COUNTY OF LOS ANGELES;
SHERIFF DEPUTY BADGE
NUMBER 404532; And DOES 1
through 10,

**DEFENDANTS, COUNTY OF LOS
ANGELES AND SERGEANT TRAVIS
KELLY'S APPLICATION TO
CONTINUE TRIAL AND PRETRIAL
DEADLINES; MEMORANDUM OF
POINTS AND AUTHORITIES**

Action Filed: August 3, 2022
Pretrial Conference: July 10, 2023
Trial Date: July 25, 2023

Assigned to:
Hon. R. Gary Klausner, District Judge
Courtroom 850

All Discovery Matters Referred to:
Hon. Maria A. Audero, District Judge

TO ALL PARTIES HEREIN AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that Defendants COUNTY OF LOS ANGELES and SERGEANT TRAVIS KELLY apply hereby, pursuant to *Federal Rules of Civil*

1 *Procedure 7(b), 16 and 40, and Local Rules 7-3, 7-4, and 40-1*, for an order continuing
2 the Trial Date from July 25, 2023 so that it may begin on October 24, 2023 or October
3 31, 2023. Defendants further apply for an extension of the discovery cut-off and expert
4 disclosure deadline from May 10, 2023 to August 10, 2023, and the Motion cut-off from
5 May 24, 2023 to August 24, 2023.

6 This Application is based on the accompanying Declarations of Sergeant Travis
7 Kelly, a party to this action, and Molshree Gupta, counsel for Defendants. The reasons
8 for the seeking of an order is the unavailability Sergeant Travis Kelly, a party to this
9 action, due to a work-related injury for which he is currently treating and does not
10 currently have a return-to-work date, as set forth in his concurrently-filed Declaration.
11 There have been no prior requests for continuance of the Trial and Pre-Trial Conference
12 dates in this action.

13 As set forth in the Declaration of Molshree Gupta, counsel for Plaintiff was
14 advised of the substance of this application and counsel for Defendants met and
15 conferred with counsel for Plaintiff, and further attempted to obtain Plaintiff's agreement
16 regarding a Stipulation for Trial Continuance, as required by Local Rule 7-3.

17 Dated: May 10, 2023 KJAR, MCKENNA & STOCKALPER, LLP
18

19 By:
20 _____
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22 PATRICK E. STOCKALPER
MOLSHREE GUPTA
23 Attorneys for Defendants,
COUNTY OF LOS ANGELES and SERGEANT
24 TRAVIS KELLY
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION & STATEMENT OF FACTS**

3 On November 7, 2022, this Court set a Jury Trial to proceed on July 25, 2023, at
4 9:00 a.m., and a Pretrial Conference for July 10, 2023, at 9:00 a.m. (Gupta Decl., ¶ 3;
5 see Docket #23, Minute Order re Pre-Trial and Trial Dates.) On the same date, the Court
6 set a motion cur-off date of May 10, 2023, and a discovery cut-off date of April 26,
7 2023. (Gupta Decl., ¶ 4; see Docket #23.)

8 On March 31, 2023, without first inquiring as to the parties' availability, Plaintiff
9 served notices for the depositions of Defendants Kelly and the County's person most
10 knowledgeable for April 25 and 26, 2023, respectively. (Gupta Decl., ¶ 5.) Plaintiff
11 had previously noticed these depositions or requested the availability of these parties for
12 a deposition; these depositions were set unilaterally. (Gupta Decl., ¶ 5.)

13 On April 5, 2023, the parties filed a Joint Stipulation to extend pre-trial deadlines,
14 and a proposed order. (Gupta Decl., ¶ 6; see Docket #41.) On April 7, 2023, this Court
15 entered an order to extend pre-trial deadlines as follows: 1) the Discovery cut-off is
16 continued to May 10, 2023; the expert disclosure deadline is continued to May 10, 2023;
17 the Motion cut-off is continued to May 24, 2023; the ADR completion deadline is
18 continued to June 9, 2023. (Gupta Decl., ¶ 6; see Docket #42.)

19 Thereafter, counsel for Defendants learned that Defendant Kelly was out on
20 medical leave due to a work-related injury. (Gupta Decl., ¶ 7.) On April 12, 2023,
21 counsel for Defendants advised Plaintiff's counsel of the same. (Gupta Decl., ¶ 7.)
22 Upon further investigation, it was discovered that Defendant Kelly would not return to
23 work prior to the discovery cut-off date of May 17, 2023. (Gupta Decl., ¶ 7.) On April
24 13, 2023, counsel for Defendants advised Plaintiff's counsel of the foregoing, and
25 requested a stipulation to continue Trial and related dates. (Gupta Decl., ¶ 7.) In
26 response, Plaintiff's counsel took the position that Defendant Kelly's unavailability due
27 to medical leave would not impact his ability to participate in this litigation. (Gupta
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1 Decl., ¶ 7.) Plaintiff's counsel declined to stipulation to continue, as requested. (Gupta
2 Decl., ¶ 7.)

3 On April 17, 2023, Defendants served objections to Plaintiff's notices for the
4 depositions of Defendants Kelly and the County's person most knowledgeable. (Gupta
5 Decl., ¶ 8.) On April 24, 2023, counsel for Defendant again wrote to Plaintiff's counsel
6 to request a stipulation to continue Trial and related dates – to attempt a second meet and
7 confer on the issue. (Gupta Decl., ¶ 8.) Plaintiff's counsel declined to stipulation to
8 continue, as requested. (Gupta Decl., ¶ 8.)

9 Thereafter, Defendant began preparing this Application. (Gupta Decl., ¶ 9.)
10 However, due to Defendant Kelly's medical leave, counsel for Defendants had some
11 difficulty in reaching him to obtain his Declaration in support of this Motion. (Gupta
12 Decl., ¶ 9.) This Motion is filed upon receipt of Defendant Kelly's supporting
13 Declaration, which is required to establish good cause for this Motion. (Gupta Decl., ¶
14 9.)

15 **II. LEGAL ANALYSIS**

16 ***A. LEGAL STANDARD***

17 Under Rule 16 of the *Federal Rules of Civil Procedure* ("FRCP"), a party must
18 show good cause before modifying a pretrial schedule. (*Fed. R. Civ. P.* 16(b)(4) ("A
19 schedule may be modified only for good cause and with the judge's consent.").)

20 Courts within this circuit consider the following four factors when evaluating
21 whether to deny or grant a request for a continuance: (1) the extent of the moving party's
22 diligence in preparing for the case for trial; (2) the usefulness of the continuance, or the
23 likelihood "that the need for a continuance could have been met if the continuance had
24 been granted"; (3) the extent to which granting the continuance would inconvenience the
25 Court, the opposing party, and the witnesses; and (4) the extent to which the moving
26 party might suffer prejudice from the Court denying the request for a continuance.
27 (*United States v. Flynt* (9th Cir. 1985) 756 F.2d 1352, 1358–59.)

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1 The district court may modify the pretrial schedule if it cannot reasonably be met
2 despite the diligence of the party seeking the extension. (*Johnson v. Mammoth*
3 *Recreations, Inc.* (9th Cir. 1992) 975 F.2d 604, 609.) Although the existence or degree
4 of prejudice to the party opposing the modification might supply additional reasons to
5 deny a motion, the focus of the inquiry is upon the moving party's reasons for seeking
6 modification. (*Id.*)

7 Good cause is a non-rigorous standard, and requests for continuance of deadlines
8 should be granted in the absence of bad faith on the part of the party seeking relief or
9 prejudice to the adverse party. (See *Ahanchian v. Xenon Pictures, Inc.* (9th Cir. 2010)
10 624 F.3d 1253, 1259 (“[R]equests for extensions of time made before the applicable
11 deadline has passed should ‘normally . . . be granted in the absence of bad faith on the
12 part of the party seeking relief or prejudice to the adverse party.’ ”)).

13 ***B. GOOD CAUSE EXISTS TO CONTINUE THE TRIAL AND***
14 ***PRETRIAL DATES DUE TO DEFENDANT KELLY'S MEDICAL***
15 ***CONDITITION***

16 Good cause exists for a continuance of the Trial and Pretrial dates in this matter
17 because Defendant Kelly, a party and a key witness to this action, is unavailable to
18 participate in this litigation due to being on medical leave associated with a work-related
19 injury. (Kelly Decl., ¶¶ 4, 5.) As noted, a showing of good cause for a motion of
20 continuance focuses on the party's “reasons for seeking modification.” (See *Johnson*,
21 975 F.2d at 609.) The unavailability of a party and key witness to participate in the
22 litigation and Trial preparation is extraordinarily good cause for Defendants' request.

23 Specifically, for about two months, Defendant Kelly has on medical leave
24 pursuant to a work-related injury to his back, neck and ulnar nerve. (Kelly Decl., ¶ 5.)
25 He is presently treating for this condition and does not know when he will be able to
26 return to work. (Kelly Decl., ¶ 5.)

27 He currently has an appointment with the doctor evaluating his condition on June
28 1, 2023. (Kelly Decl., ¶ 6.) On this date, he will learn more about his present condition

1 and have a discussion regarding the next steps in treatment; he will also learn whether he
2 can be scheduled for a surgery for his arm. (Kelly Decl., ¶ 6.) On this date, he plans to
3 discuss his participation in this litigation, including any restrictions or instructions with
4 respect to sitting for a deposition and/or participating in Trial. (Kelly Decl., ¶ 6.) He
5 will also not know whether and when he may be able to return to work until June 1,
6 2023, at which time his doctor will evaluate his condition and advise as to the
7 recommended treatment course. (Kelly Decl., ¶ 7.)

8 Plaintiff first noticed by Deposition on or about March 31, 2023. (Kelly Decl., ¶
9 8.) At this time, Defendant Kelly had already been on medical leave for over a month.
10 (Kelly Decl., ¶ 8.) Plaintiff noticed my deposition to proceed outside of Los Angeles
11 County in Laguna Hills, California – which is approximately 80 miles away from his
12 assigned Sheriff's Station in Santa Clarita, California and the location where this
13 incident occurred in Canyon Country, California. (Kelly Decl., ¶ 9.) While Defendant
14 Kelly did not have any objection to appear for a deposition, he will need to consult with
15 his doctor on June 1, 2023, to determine any instructions and restrictions to extensive
16 travel for the deposition and/or prolonged in person examination. (Kelly Decl., ¶ 10.)

17 In addition, Defendant Kelly had agreed to appear for a deposition prior to his
18 June 1, 2023, doctor's appointment, but requested that Plaintiff's counsel agree to
19 proceed via Zoom or another virtual platform, and, pursuant to applicable procedural and
20 time limitations, further agree to suspend the deposition to be rescheduled for a mutually
21 agreeable date if Defendant Kelly is unable to complete his deposition in one session due
22 to his condition. (Kelly Decl., ¶ 11; Gupta Decl., ¶ 10.) Despite this offer, Plaintiff's
23 counsel has chosen not to accommodate Defendant Kelly's request for accommodation.
24 (Gupta Decl., ¶ 10.)

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1 **C. THE TRIAL HAS NOT PREVIOUSLY BEEN CONTINUED AND NO**
2 **PARTY WILL BE PREJUDICED BY THE REQUESTED**
3 **CONTINUANCE**

4 Plaintiff filed this action on August 2, 2023. (Gupta Decl., ¶ 11.) The Trial in this
5 matter has not previously been continued. (Gupta Decl., ¶ 11.) Defendants request a
6 continuance of the Trial and pre-Trial dates of approximately 90 days to complete the
7 deposition of Defendant Kelly and to obtain any supplemental expert opinions based on
8 the same. (Gupta Decl., ¶ 11.)

9 Defendants request this continuance because Defendant Kelly has been on medical
10 leave and is presently unaware whether he is able to sit for a deposition or otherwise
11 participate in the currently scheduled Trial, and the conditions or restrictions under
12 which he can do so. (Kelly Decl., ¶¶ 5-7; Gupta Decl., ¶ 12.) It is defense counsel's
13 understanding and belief that this information cannot be determined until Defendant
14 Kelly's June 1, 2023 doctor's appointment. (Gupta Decl., ¶ 12.)

15 Plaintiff will not be prejudiced by this request, as he has requested and indicated that
16 he requires Defendants' depositions in this action. (Gupta Decl., ¶ 13.)

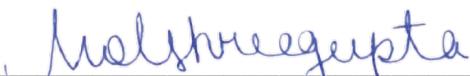
17 **III. CONCLUSION**

18 Based on the foregoing, Defendants respectfully request that this Court continue
19 the Trial Date from July 25, 2023 so that it may begin on October 24, 2023 or October
20 31, 2023. Defendants further respectfully request an extension of the discovery cut-off
21 and expert disclosure deadline from May 10, 2023 to August 10, 2023, and the Motion
22 cut-off from May 24, 2023 to August 24, 2023.

23 Dated: May 10, 2023

KJAR, MCKENNA & STOCKALPER, LLP

24
25 By:



26 PATRICK E. STOCKALPER

27 MOLSHREE GUPTA

28 Attorneys for Defendants,

COUNTY OF LOS ANGELES and SERGEANT
TRAVIS KELLY

CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245.

On May 10, 2023, I served the foregoing document described as **DEFENDANTS, COUNTY OF LOS ANGELES** and **SERGEANT TRAVIS KELLY'S APPLICATION TO CONTINUE TRIAL AND PRETRIAL DEADLINES; MEMORANDUM OF POINTS AND AUTHORITIES** on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

By Mail I caused such envelope(s) to be deposited in the mail at El Segundo, California. The envelope was mailed with postage thereon fully prepaid and addressed to the parties listed on the Service List. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

XX By Email Based upon a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in the Service List. My email address is mnixon@kmslegal.com.

By Personal Service I caused such document to be Personally Served on the parties listed in the Service List.

XX State I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 10, 2023, at El Segundo, California.

W.M. H.

Maria Nixon

SERVICE LIST

Assiff, Joshua vs. County of Los Angeles, et al.

Central District- Case No.: 2:22-cv-05367 RGK(MAAx)

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|---|---|
| <p>Thomas M. Ferlauto, Esq. Law Office of Thomas M. Ferlauto, APC 25201 Paseo de Alicia, Ste. 270 Laguna Hills, CA 92653 EM: tmf@lawofficetmf.com</p> | <p>Attorney for Plaintiff, JOSHUA ASSIFF</p> |
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